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SENATE

REPORT
101-76

# FEDERAL ENERGY REGULATORY COMMISSION MEMBER ACT OF 1989

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JULY 12 (legislative day, JANUARY 3), 1989.—Ordered to be printed

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Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

## REPORT

[To accompany S. 388]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 388) to provide for 5-year, staggered terms for members of the Federal Energy Regulatory Commission, and for other purposes, having considered the same, reports favorably thereon with amendments and recommends that the bill, as amended, do pass.

The amendments are as follows:

1. On page 2, lines 18, 23 and 25, and on page 3, lines 5 and 7, delete "December 31" and insert in lieu thereof, "June 30".

2. On page 2, line 9, delete "fourth, sixth, and seventh" and insert in lieu thereof "fourth and sixth".

3. On page 2, line 10, delete "and", and insert after line 10 the following:

> (3) amend the seventh sentence to read, "A Commissioner may continue to serve after the expiration of his term until his successor is appointed and has been confirmed and taken the oath of Office, except that such Commissioner shall not continue to serve beyond the end of the session of the Congress in which such term expires."; and

4. On page 2, line 11, redesignate "(3)" as "(4)".

5. At the end of the bill, add new sections 3 and 4 as follows:

**SEC. 3. COMPENSATION OF THE CHAIRMAN AND MEMBERS.**

Section 204 of the Department of Energy Organization Act is amended by striking the second and third sentences and inserting in lieu thereof the following: "The Chairman



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shall be compensated at the rate provided for level II of the Executive Schedule under section 5313 of title 5. The other members of the Commission shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5.".

SEC. 4. ACCESS TO STAFF AND PARTICIPATION IN POLICYMAKING AND SCHEDULING.

Section 401(c) of the Department of Energy Organization Act is amended by striking the period at the end of the first sentence of subsection (c) and inserting in lieu thereof, ": *Provided,* That the Commission (i) shall have full access to the Commission staff and resources and (ii) shall direct the formulation of policy and scheduling of matters including, but not limited to, generic policy initiatives and Congressional reports and testimony.".

## PURPOSE OF THE MEASURE

The purpose of S. 388 is to promote greater continuity of policymaking and experience on the part of members of the Federal Energy Regulatory Commission (FERC) by amending the Department of Energy Organization Act to provide for 5-year staggered terms for FERC Commissioners. Under current law, members of the FERC serve 4-year terms with the expiration dates sequenced so that it is possible to have four members depart the FERC in less that 2 years, with a corresponding loss of experience and continuity in FERC decisionmaking.

## BACKGROUND AND NEED

Pursuant to its statutory mandates under the Natural Gas Act, the Natural Gas Policy Act of 1978, the Federal Power Act, the Public Utility Regulatory Policies Act of 1978, the Interstate Commerce Act, and other Acts, the FERC administers Federal energy policy affecting natural gas, electricity, hydroelectric power and oil pipelines. With the significant scope of its mandate, the FERC must be organized in a manner that ensures the effectiveness and timeliness of its policymaking activities.

Under current law, the five members of the FERC serve 4-year, staggered terms and may continue to serve after the expiration of their terms until a successor takes office, but for no longer that 1 year following the date on which the term had otherwise expired. Under the sequence specified in section 401(b) of the Department of Energy Organization Act (DOE Act), the current members' terms expire in the following order: (1) a single member's term expires on October 20, 1989; (2) two members' terms expire on October 20, 1991; and (3) the remaining two members' terms expire on October 20, 1992.

As a result of this expiration sequence specified, it is possible for as many as four members to leave the FERC within a 2-year span, with a corresponding loss of experience and continuity in FERC decisionmaking. In fact, such a situation occurred in 1988 when the terms of two sitting members had expired, the terms of two other members were about to expire, and the fifth member had resigned. Had successors not been confirmed at the last minute, the FERC

would have been left without a quorum of three members, as required under section 401(e) of the DOE Act, and would have been unable to conduct business.

S. 388 will help to ensure that this situation does not recur. It provides for 5-year, staggered terms for members of the FERC. One member's term would expire each year. The transition to fully staggered, 5-year terms is phased so that the initial appointments to the FERC following enactment will be for 3-, 4-, or 5-year terms ending in 1993, 1994, 1995, 1996 and 1997. Thereafter, all terms will be full 5-year terms. S. 388 does not affect the terms of the FERC's current members.

## Legislative History

S. 388 was introduced on February 8, 1989, by Senator Bingaman on behalf of himself, Senator Johnston, and Senator Boren. On April 17, 1989, the Committee on Energy and Natural Resources held a hearing on S. 388. At its business meeting on June 19, 1989, the Committee reported S. 388 favorably as amended.

## Committee Recommendations and Tabulation of Votes

The Committee, in open business session on June 19, 1989, by a majority vote of a quorum present recommends that the Senate pass S. 388 as described herein.

The rollcall vote on reporting the measure was 18 yeas, 1 nay, as follows:

| YEAS | NAYS |
|---|---|
| Mr. Johnston | Mr. Wallop |
| Mr. Bumpers | |
| Mr. Ford* | |
| Mr. Metzenbaum | |
| Mr. Bradley | |
| Mr. Bingaman | |
| Mr. Wirth | |
| Mr. Conrad* | |
| Mr. Heflin | |
| Mr. Rockefeller* | |
| Mr. McClure | |
| Mr. Hatfield* | |
| Mr. Domenici | |
| Mr. Murkowski | |
| Mr. Nickles* | |
| Mr. Burns | |
| Mr. Garn | |
| Mr. McConnell* | |

*Indicates vote by proxy.

## Committee Amendments

The Committee amended S. 388 to: (1) change the date of expiration of FERC members' terms from December 31, as provided for in the bill, to June 30; (2) allow a FERC member to continue to serve after the expiration of his or her term until a successor is put in place or until the end of the session of Congress in which the term

expires, whichever occurs first; (3) increase the compensation of the FERC Chairman and the members of the FERC by one level of the Executive Schedule; and (4) clarify members access to FERC staff and members' role in the formulation of agency policy and the scheduling of agency business.

As introduced, S. 388 would have amended section 401(b) of the DOE Act to specify December 31 as the expiration date of FERC members' terms. Under current law, members' terms expire on October 20, because it was on that calendar date that the very first FERC members were confirmed by the Senate. The October 20 expiration date has proven troublesome due to its proximity to election day. June 30 was substituted for December 31 so as to give a new President adequate time to nominate an individual to fill a vacancy on the FERC.

As introduced, S. 388 would have amended section 401(b) of the DOE Act to eliminate the 1-year grace period that a member of the FERC may serve after the expiration of his or her term. At the Committee's hearing on S. 388, witnesses testified in favor of reinstating some form of grace period for a FERC member whose terms had expired but whose successor had not been confirmed. In response, the Committee amended S. 388 to include a grace period that permits a member whose term has expired to continue to serve until a successor is confirmed or until the end of the session of Congress during which the member's term expires, whichever occurs first. Since the members' terms expire on June 30, the maximum grace period would be 6 months.

Under current law, the Chairman of the FERC is compensated at level III of the Executive Schedule and the other members of the FERC are compensated at level IV. The Committee amended S. 388 to specify that the Chairman of the FERC be compensated at the rate provided for level II of the Executive Schedule and that the other members be compensated at the rate provided for level III. Under the Executive Schedule, Presidential appointees at executive level II are compensated at $89,500 per year, appointees at level III are compensated at $82,500 per year, and appointees at level IV are compensated at $80,700 per year. This proposed adjustment, while modest, brings the chairman and members of the FERC in line with their counterparts at the Nuclear Regulatory Commission.

The Committee amended section 401(c) of the DOE Act to clarify that the statutory authority vested in the Chairman on behalf of the FERC "for the executive and administrative operation of the Commission" is not to be interpreted as limiting or controlling FERC members' access to the resources of the FERC staff nor as vesting sole responsibility for policy formulation and scheduling of FERC business in the Chairman. Thus, the amendment would ensure that all members of the FERC have available all relevant information, analysis and FERC staff expertise to participate responsibly in FERC policy formulation. Additionally, consistent with the intent of the Congress in the establishment of the FERC, the full membership acting in concert would be responsible for the formulation of agency policy and the scheduling of agency business, particularly generic policy initiatives and Congressional reports

and testimony. The amendment would not otherwise affect the Chairman's responsibilities for routine administrative duties.

During the Committee's September 1988 hearings on nominations to the FERC, statements were made by two sitting members that improvements were necessary if the Chairman and members of the FERC were to operate as a collegial body with regards to the aformentoned activities. The Committee encourages the Chairman and other members of the FERC to cooperate with each other and to act as the collegial body established by the DOE Act in administering the FERC's mandate over important aspects of Federal energy policy.

## Section-by-Section Analysis

*Section 1* of the bill is the short title, the "Federal Energy Regulatory Commission Member Term Act of 1989".

*Section 2(a)* of the bill amends section 401(b) of the DOE Act to state that the duration of FERC members' terms shall be 5 years in lieu of the 4 years provided under current law.

*Section 2(b)* of the bill provides that the expiration dates for FERC members' terms shall be staggered such that a single member's term shall expire June 30 of each year. The transition to fully staggered 5-year terms is set up so that the initial appointments to the FERC after the bill is enacted shall be for 3-, 4-, and 5-year terms ending in 1993, 1994, 1995, 1996, and 1997. Thereafter, all terms will be 5-year terms.

Section 2(b) provides for a grace period that permits a FERC member whose term has expired to continue to serve until a successor is confirmed or until the end of the session of Congress during which the member's term expired, whichever occurred first. Section 2(b) also changes the expiration date of FERC members' terms to June 30. Under current law, members' terms expire on October 20 and members may serve after the expiration of their terms until a successor takes office, but for no longer than one year following the date upon which their term had otherwise expired.

*Section 2(c)* provides that the amendments made by section 2 shall apply only to persons appointed or reappointed to the FERC subsequent to the bill's enactment.

*Section 3* of the bill increases the compensation of the Chairman and members of the FERC by one level of the Executive Schedule. Under current law, the Chairman is compensated at level III of the Executive Schedule and the other members of the FERC are compensated at level IV. Section 3 of the bill raises the Chairman to level II and raises the other members to level III. In terms of compensation, this translates into a $7,000 per year increase for the Chairman (to $89,500 per year) and a $1,800 per year increase for the other members (to $82,500 per year). While modest, this adjustment at least brings the Chairman and members of the FERC in line with their counterparts at the Nuclear Regulatory Commission.

*Section 4* of the bill clarifies FERC members' access to FERC staff and the participatory role that all FERC members have in the formulation of agency policy and the scheduling of agency business.

## Cost and Budgetary Considerations

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

## Regulatory Impact Evaluation

S. 388 is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses. Rather, S. 388 deals soley with the internal administration of a Federal agency.

No personal information would be collected in administering the statutory changes made by S. 388. Therefore, there would be no impact on personal privacy.

Little if any additional paperwork would result from the enactment of S. 388.

## Executive Communications

On March 30, 1989, the Committee on Energy and Natural Resources requested legislative reports from the Federal Energy Regulatory Commission and the Office of Management and Budget setting forth executive views on S. 388. These reports had not been received at the time the report on S. 388 was filed. When the reports become available, the chairman will request that they be printed in the Congressional Record for the advice of the Senate.

Representatives of the Department of Energy and the Chairman of the FERC testified on S. 388 at the Committee's April 17, 1989, hearing. Under Secretary of Energy John Tuck testifies on behalf of the Department of Energy and Ms. Catherine Cook, General Counsel of the FERC, testified on behalf of Chairman Martha Hesse of the FERC. (Their testimony on S. 388 appears in S. Hrg. 101–46.)

## Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, the Committee notes the following changes in existing law made by the bill as reported (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, and existing law to which no change is proposed is shown in roman):

## Department of Energy Organization Act

(91 Stat. 565)

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## TITLE II—ESTABLISHMENT OF THE DEPARTMENT

### ESTABLISHMENT

SEC. 201. * * *

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### FEDERAL ENERGY REGULATORY COMMISSION

SEC. 204. There shall be within the Department, a Federal Energy Regulatory Commission established by title IV of this Act (hereinafter referred to in this Act as the "Commission"). [The Chairman shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5, United States Code. The other members of the Commission shall be compensated at the rate provided for level IV of the Executive Schedule under section 5315 of title 5, United States Code.] *The Chairman shall be compensated at the rate provided for level II of the Executive Schedule under section 5315 of title 5. The other members of the Commission shall be compensated at the rate provided for level III of the Executive Schedule under section 5314 of title 5.* The Chairman and members of the Commission shall be individuals who, by demonstrated ability, background, training, or experience, are specially qualified to assess fairly the needs and concerns of all interests affected by Federal energy policy.

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## TITLE IV—FEDERAL ENERGY REGULATORY COMMISSION

### APPOINTMENT AND ADMINISTRATION

SEC. 401. (a) There is hereby established within the Department an independent regulatory commission to be known as the Federal Energy Regulatory Commission.

(b)*(1)* The Commission shall be composed of five members appointed by the President, by and with the advice and consent of the Senate. One of the members shall be designated by the President as Chairman. Members shall hold office for a term of [four years] *five years* and may be removed by the President only for inefficiency, neglect of duty, or malfeasance in office. [The terms of the members first taking office shall expire (as designated by the President at the time of appointment), two at the end of two years, two at the end of three years, and one at the end of four years.] Not more than three members of the Commission shall be members of the same political party. [Any Commissioner appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. A Commissioner may continue to serve after the expiration of his term until his successor has taken office, except that he may not so continue to serve for more than one year after the date on which his term would otherwise expire under this subsection.] *A Commissioner may continue to serve after the expiration of his term until his successor is appointed and has been confirmed and taken the oath of Office, except that such Commissioner shall not continue to serve beyond the end of the session of the Congress*

*in which such term expires.* Members of the Commission shall not engage in any other business, vocation, or employment while serving on the Commission.

*(2) Notwithstanding the provisions of paragraph (1), the terms of members first taking office after the date of enactment of the Federal Energy Regulatory Commission Member Term Act of 1989 shall expire as follows:*

*(A) In the case of the member appointed to succeed the member whose term expires in 1989, such member's term shall expire on June 30 of the fourth year after the expiration of the predecessor's term.*

*(B) In the case of members appointed to succeed members whose terms expire in 1991, one such member's term shall expire on June 30 of the third year after the expiration of the predecessor's term, and one such member's term shall expire on June 30 of the fourth year after the expiration of the predecessor's term, as designated by the President at the time of appointment.*

*(C) In the case of members appointed to succeed members whose terms expires in 1992, one such member's term shall expire on June 30 of the fourth year after the expiration of the predecessor's term and one such member's term shall expire on June 30 of the fifth year after the expiration of the predecessors term.*

*(D) Any member appointed to fill a vacancy occurring prior to the expiration for the term for which his predecessor was appointed shall be appointed only for the remainder of such term.*

(c) The Chairman shall be responsible on behalf of the Commission for the executive and administrative operation of the Commission, including functions of the Commission with respect to (1) the appointment and employment of hearing examiners in accordance with the provisions of title 5, United States Code, (2) the selection, appointment, and fixing of the compensation of such personnel as he deems necessary, including an executive director, (3) the supervision of personnel employed by or assigned to the Commission, except that each member of the Commisison may select and supervise personnel for his personal staff, (4) the distribution of business among personnel and among administrative units of the Commission, and (5) the procurement of services of experts and consultants in accordance with section 3109 of title 5, United States Code**[**.**]**: *Provided, That the Commission (i) shall have full access to the Commission staff and resources and (ii) shall direct the formulation of policy and scheduling of matters including, but not limited to, generic policy initiatives and Congresssional reports and testimony.* The Secretary shall provide to the Commission such support and facilities as the Commission determines it needs to carry out its functions.

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